

# **Town of Brookline Tree Bylaw**

**June 10, 2002 DRAFT**

## **Section 1: Preamble**

The Town of Brookline finds that mature trees have aesthetic appeal, contribute to the distinct character of the community, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood- and climate-control, create habitats for wildlife, enhance property values and provide natural privacy to neighbors.

## **Section 2: Intent and Purpose**

This by-law is enacted for the purpose of preserving and protecting both Public Shade Trees pursuant to General Law Chapter 87 and certain designated trees on private property. It is desirable to plant more public shade trees than are removed to compensate for tree losses and the length of time to maturity.

## **Section 3: Definitions**

When used in this by-law, the following definitions shall apply:

- 3.1 Demolition: Any act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.
- 3.2 Caliper: Diameter of a tree trunk (in inches) measured 6 inches above the ground for trees up to and including 4-inch diameter, and 12 inches above the ground for larger trees.
- 3.3 DBH ("Diameter at Breast Height"): The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks) measured 4 ½ feet from the existing grade at the base of the tree.
- 3.4 Person: Any person, firm, partnership, association, corporation, company or organization of any kind including public utility and municipal department.
- 3.5 Public Shade Tree: Any tree within the public right-of-way except for state highways that, as determined by the Tree Warden, has any portion of the stem between 6 inches and 4 ½ feet above grade actively growing into the public right-of-way.
- 3.6 Tree Removal: Any act that will cause a tree to die within a three (3) year period.
  - 3.6.1 A protected tree is any tree that is greater than eight inches in diameter measured at 4.5' off the ground.
  - 3.6.2 Structure: A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or part or parts thereof".

#### **Section 4: Applicability of the By-law**

4.1 Applicability: The circumstances under which the tree removal and replacement regulatory process delineated in this by-law shall apply are as follows:

- (a) the proposed demolition of an existing residential structure and its replacement with a new dwelling/structure.
- (b) the proposed construction of an addition to the existing residential structure that constitutes a 10% or greater increase in the building footprint
- (c) the proposed demolition of an existing non-residential structure and its replacement with a new dwelling/structure.
- (d) the proposed construction of an addition to the existing non-residential structure that constitutes a 10% or greater increase in the building footprint.
- (e) the proposed new construction of a residential or non-residential structure on any lot.
- (f) the proposed removal and replacement of existing public shade trees by the town or their agents or contractors.
- (g) Section 509 or special permit process.

#### **Section 5: Tree Warden**

The duties or responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to the following: management of all trees within public rights-of-way and adjacent to public buildings and commons; care and control of trees on Town property if so requested by the Commissioner of Public Works or the Director of Parks and Open Space

- (a) expending funds, in coordination with the Tree Planting Committee, appropriated for planting trees on Town land under the jurisdiction of the Tree Warden;
- (b) enforcement of this by-law;
- (c) work with the Building Commissioner his or her designee to review proposed tree removals as regulated by this by-law.

Moreover, the Commissioner of Public Works or the Director of Parks and Open Space may authorize the Tree Warden to undertake other responsibilities consistent with the intent of this by-law.

## **Section 6: Regulation of Public Shade Trees**

### **6.1 Scope**

A Public Shade Tree may not be cut, pruned, removed or damaged by any person other than the Tree Warden or his or her designee until and unless the Tree Warden issues a written permit pursuant to this section.

### **6.2 Procedures**

Any person seeking to remove a Public Shade Tree shall submit an application to the Tree Planting Committee in accordance with any application requirements issued by the Warden. The Tree Planting Committee shall hold a public hearing on applications for removal, at the expense of the applicant, in accordance with the provisions outlined within General Law Chapter 87. The permit issued by the Tree Planting Committee may specify schedules, terms, and conditions, including requiring the planting of replacement trees.

### **6.3 Planting of Trees on Public Land**

Any person seeking to plant a Public Shade Tree on Town land under the jurisdiction of the Tree Warden must obtain written permission from the Tree Warden. Such permission may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden.

## **Section 7: Regulation of Protected Trees**

### **7.1 Scope**

The removal of Protected Trees is prohibited unless authorized by the Tree Warden or the Tree Planting Committee as set forth below.

### **7.2 Procedures**

In connection with Major Construction or Demolition, the owner of the property shall submit a proposal for tree removal and mitigation to the Building Commissioner with the application for a demolition or building permit. As part of the permit process, the property owner shall submit to the building commissioner a site plan drawn and stamped by a registered land surveyor showing all existing trees 8" DBH or greater.

The Building Commissioner shall refer the tree proposal to the Tree Warden. The Tree Warden shall conduct a site visit. If the applicant's proposal is consistent with the mitigation requirements herein, the Tree Warden will issue a permit within twenty (20) business days of receipt to authorize the tree work. If the proposal does not meet or satisfy these requirements, the Tree Warden shall so notify the applicant and deny the permit.

An applicant may appeal the denial or grant of a tree permit to the Tree Planting Committee. The Tree Planting Committee shall conduct a public hearing on the appeal and shall give the public notice thereof, at the expense of the applicant. Public notice shall include all persons owning land within 300 feet of any part of applicant's land at least fourteen (14) days before said hearing. The Tree Planting Committee shall rule within twenty business (20) days of the public hearing.

Appeals of final decisions of the Tree Planting Committee shall be to the Board of Selectmen.

### 7.3 Mitigation

A Protected Tree shall not be removed unless at least one of the following provisions is satisfied:

(a) Replanting of trees: such replanting shall be on the basis of ½ inch caliper of new tree(s) for each inch of DBH of tree(s) removed, and each replanted tree must have a minimum caliper of 3 inches. The replanting shall occur no later than 12 months after completion of the construction work, either on applicant's land or on land abutting applicant's land with express approval of the owner of such abutting land; or other site as approved by the Tree Warden

(b) Contribution into the Tree Replacement Fund: such contribution shall be \$50 per DBH inch of Protected Tree removed not already mitigated as per section 7.3 (a); or

(c) The applicant demonstrates that the removal of a Protected Tree does not adversely impact the interests identified in section one of this by-law.

### 7.4 Tree Replacement Fund

The Director of Parks and Open Space with input from the Tree Warden, shall have sole discretion concerning the use of funds from the Tree Replacement Fund which shall be disbursed by the Tree Warden for the planting (and maintenance, as necessary) of trees on public land or private property with express approval of the owner of such private property.

## **Section 8: Emergencies and Exemptions**

Provisions of this by-law shall not apply to:

- (a) emergency projects necessary for public safety, health and welfare as determined by the Commissioner of Public Works or the Director of Parks and Open Space; and
- (b) trees that are hazardous (threat to life and/or property) as determined in writing by the Tree Warden and/or the Town Arborist; and
- (c) trees identified by the Commonwealth that pose a risk due to insect/disease infestation.

## **Section 9: Enforcement/Penalties**

### 9.1 Enforcement:

Any person violating this by-law is subject to the penalties under Article I, Section 6 as amended in this warrant article; General Law Chapter 87 (for violating Section 6 of this by-law); and other legal enforcement action by the Town. The Tree Warden is authorized to enforce the provisions of Article I of the General By-laws and the provisions of General Law Chapter 87. Any other legal enforcement action shall be determined by the Board of Selectmen in consultation with the Tree Planting Committee, the Tree Warden and Town Counsel.

### 9.2 Penalties:

Any person who removes or trims a public shade tree without a permit or hearing as required by law shall be subject to cumulative fines as follows:

- up to \$500 as provided by Massachusetts General Laws Chapter 87, § 6.
- Triple damages as set forth in Massachusetts General Laws Chapter 242, § 7.

Each instance in which a Protected Tree is removed without a Tree Permit shall constitute a violation of this by-law and shall be subject to a fine of \$300 and \$50 per caliper inch.

A violation of the provisions of this by-law shall result in the revocation of a building permit.

#### **Section 10: Rules and Regulations**

The Selectmen may promulgate, after public notice and hearing, Rules and Regulations to effectuate the purposes and intent of this By-law. Failure by the Selectmen to promulgate such Rules and Regulations shall not act to suspend or invalidate the effect of this By-law.

#### **Section 11: Severability**

If any section, paragraph or part of this by-law is for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force.

#### **Section 12: Relationship to Other By-laws**

Nothing in this by-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Brookline by-laws or Commonwealth of Massachusetts laws.